

1 BARRY J. PORTMAN  
Federal Public Defender  
2 LARA S. VINNARD  
Assistant Federal Public Defender  
3 160 West Santa Clara Street, Suite 575  
San Jose, CA 95113  
4 Telephone: (408) 291-7753  
5 Counsel for Defendant CUENCA

6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA, ) No.: CR 09-00361 JW  
12 )  
Plaintiff, ) **STIPULATION TO CONTINUE**  
13 ) **HEARING AND EXCLUDE TIME;**  
v. ) **[PROPOSED] ORDER**  
14 )  
DEREK CUENCA, )  
15 )  
Defendant. )  
16 )

17 Defendant and the government, through their respective counsel, hereby stipulate that,  
18 subject to the Court's approval, the hearing in the above-captioned matter, presently scheduled  
19 for Monday, August 31, 2009, at 1:30 p.m., be continued to Monday, September 28, 2009, at  
20 1:300 p.m. The continuance is requested because the parties have been discussing and  
21 attempting to reconcile disputed issues regarding sentencing, and the defense requires time to  
22 discuss the government's current proposal with Mr. Cuenca. Additionally, in the event that Mr.  
23 Cuenca accepts the government's proposal, the government will require time to prepare a  
24 proposed plea agreement and obtain necessary approval. Finally, government counsel will be out  
25 of the office next week, so that time is needed for continuity of counsel.

26 The parties further agree that time should be excluded under the Speedy Trial Act because

1 the ends of justice served by granting the requested continuance outweigh the interest of the  
2 public and the defendant in a speedy trial. The failure to grant the requested continuance would  
3 deny defense counsel reasonable time necessary for effective preparation, taking into account the  
4 exercise of due diligence, and would result in a miscarriage of justice. The parties therefore  
5 stipulate that this exclusion of time should be made under 18 U.S.C. §§ 3161(h)(8)(A) and  
6 (B)(iv).

7 Dated: 8/21/09

/s/  
\_\_\_\_\_  
LARA S. VINNARD  
Assistant Federal Public Defender

9 Dated: 8/21/09

/s/  
\_\_\_\_\_  
GRANT FONDO  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	No.: CR 09-00361 JW
	)	
Plaintiff,	)	<b>[PROPOSED] ORDER CONTINUING</b>
	)	<b>HEARING AND EXCLUDING TIME</b>
v.	)	
	)	
DEREK CUENCA,	)	
	)	
Defendant.	)	
_____	)	

The parties have jointly requested a continuance of the hearing set for Monday, August 31, 2009, to allow time for Mr. Cuenca and his counsel to prepare effectively by discussing the government's current settlement proposal, and to allow time for the government to prepare and obtain approval for a proposed plea agreement. Additionally, time is needed for continuity of counsel.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that the hearing date presently set for Monday, August 31, 2009, be continued to Monday, September 28, 2009, at 1:30 p.m.

Pursuant to the parties' stipulation, IT IS FURTHER ORDERED that the period of time from August 31, 2009 to September 28, 2009, shall be excluded from the period of time within

1 which trial must commence under the Speedy Trial Act, 18 U.S.C. § 3161 et seq. The Court  
2 finds, based on the aforementioned reasons, that the ends of justice served by granting the  
3 requested continuance outweigh the interest of the public and the defendant in a speedy trial.  
4 The failure to grant the requested continuance would deny defense counsel reasonable time  
5 necessary for effective preparation, taking into account the exercise of due diligence, and would  
6 result in a miscarriage of justice. The Court therefore concludes that this exclusion of time  
7 should be made under 18 U.S.C. §§ 3161(h)(8)(A) and (B)(iv).

8 Dated:

\_\_\_\_\_  
JAMES WARE  
United States District Judge